



In a February 18, 2002, Settlement Hearing, before Special Administrative Law Judge Mark Ferguson (SALJ), claimant appeared pro se and settled with respondent her workers compensation claim for a March 10, 2001, right knee injury. Claimant fell at work on March 10, 2001, and injured her right knee. Respondent provided medical treatment for the right knee injury which included surgery. Claimant returned to her regular work with respondent. At the Settlement Hearing, claimant received \$1,880.55, as a lump settlement for an approximate 4 percent permanent partial disability of the right lower extremity.

On February 7, 2002, claimant again injured her right knee while working for the respondent when she slipped on some ice in respondent's parking lot and fell on the right knee. Claimant notified respondent of the February 7, 2002, accident and respondent authorized claimant to return to orthopedic surgeon Mark J. Maguire, M.D., for examination and treatment. Dr. Maguire also was the same physician who provided medical treatment including surgery for claimant's March 10, 2001, right knee injury.

Claimant first saw Dr. Maguire for the February 7, 2002, right knee injury on February 8, 2002. Dr. Maguire's opinion was that claimant likely aggravated degenerative arthritis in her right knee. He continued claimant on Vioxx to help with the pain. Because claimant did not improve, Dr. Maguire, on April 18, 2002, performed arthroscopic surgery on claimant's right knee. During the arthroscopic surgical procedure, the doctor removed a loose body found in the right knee and performed an achondroplasty of the medial femoral condyle. Dr. Maguire returned claimant to light duty work for respondent on May 17, 2002. At that time, respondent notified claimant and Dr. Maguire that her workers compensation claim for the February 7, 2002, right knee injury was denied.

Although respondent had authorized medical treatment for claimant's February 7, 2002, right knee injury, claimant offered and ALJ admitted into the preliminary hearing record unpaid medical bills for treatment of claimant's February 7, 2002, right knee injury from Dr. Maguire, Heart of America Surgery Center, and Anesthesiology Chartered and Albertson's Pharmacy. At the time of the preliminary hearing, claimant remained under Dr. Maguire's care and also continued to work for respondent on light duty.

At the time claimant attended the February 18, 2002, Settlement Hearing, claimant testified she understood that she was there only to settle her claim for the March 10, 2001, right knee injury. In fact, before the Settlement Hearing took place, claimant met with respondent and its insurance carrier's attorney, Matthew Weaver. Mr. Weaver explained to claimant the process of going before the SALJ and settling her March 10, 2001, right knee claim. During that meeting, claimant testified she told Mr. Weaver she had fallen at work on February 7, 2002, and had reinjured her right knee. Mr. Weaver then assured claimant that the February 7, 2002, right knee injury had "...nothing to do with why we're here today."<sup>1</sup> Also, before the Settlement Hearing, claimant was not shown the Form 12

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<sup>1</sup> P.H. Trans. at 25.

Worksheet for Settlement which included the language "Settlement is intended to conclude all claims for any and all workers compensation injuries to date against respondent and carrier." Claimant, however, did acknowledge she recalled Mr. Weaver, during the Settlement Hearing, indicated the settlement was intended to include all claims for any and all workers compensation injuries to date against the respondent and carrier. But claimant testified she thought the settlement applied only "...towards the injury I had on March 10." Claimant was also asked why she believed the settlement only applied to the March 10, 2001, accident. Claimant replied, "...Mr. Weaver, before we went in there, said, 'That's what we are here for only.'"<sup>2</sup>

Respondent argues the February 18, 2002, Settlement Hearing not only settled claimant's March 10, 2001, right knee injury but also settled her February 7, 2002, right knee injury. Respondent contends that conclusion is supported by the language contained in the Form 12 Worksheet for Settlement and the statement made by Mr. Weaver, during the settlement hearing, that indicated the settlement included all claims for any and all workers compensation injuries to date against respondent and carrier. Thus, respondent argues it has no liability under the Workers Compensation Act for claimant's subsequent February 7, 2002, right knee injury and her claim should be denied.

The Board disagrees with respondent's argument. The Board finds claimant relied on respondent's attorney Matthew Weaver's representation that the Settlement Hearing was only settling her March 10, 2001, right knee claim and not her February 7, 2002, claim. Claimant's testimony concerning this assertion was uncontradicted by the respondent in the preliminary hearing record. As noted in the Settlement Hearing and the Form 12 Worksheet for Settlement, the purpose of the settlement was related to claimant's March 10, 2001, accident and resulting right knee injury. The Board finds the greater weight of the evidence contained in the preliminary hearing record to date is persuasive to conclude a pro se claimant, as the claimant was in this case, would have reasonably relied on respondent's attorney's assurance that the purpose of the February 18, 2002, Settlement Hearing was only to settle claimant's March 10, 2001, right knee injury.

The Board also concludes, based on the present uncontradicted testimony of the claimant, that respondent's attorney, Matthew Weaver, having knowledge of claimant's subsequent February 7, 2002, work-related right knee injury, should have made the SALJ aware of the intervening work-related accident and resulting right knee injury. Thus, clarifying the settlement only involved the March 10, 2001, right knee injury.

Additionally, respondent argues claimant failed to prove her February 7, 2002, fall at work and current need for medical treatment arose out of and in the course of her employment with respondent. Respondent contends Dr. Maguire's medical records proved the claimant's need for medical treatment was not the result of a new injury, but was

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<sup>2</sup> P.H. Trans. at 27-28.

instead the continuation of her March 10, 2001, right knee injury. The Board finds the claimant's testimony and Dr. Maguire's medical records after claimant's February 7, 2002, fall proved that the fall at least aggravated and worsened claimant's preexisting right knee condition resulting in the need for additional surgery.

**WHEREFORE**, the Board affirms ALJ Steven J. Howard's October 2, 2002, preliminary hearing Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 2003.

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BOARD MEMBER

c: Timothy M. Alvarez, Attorney for Claimant  
Michael R. Kauphusman, Attorney for Respondent  
Steven J. Howard, Administrative Law Judge  
Director, Division of Workers Compensation